

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SYNDARA S. WASSERMAN,
ZADRIEN WASSERMAN, ATEEHYAH
CARLISLE, and ZEVADON CATHERS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ASHLEY CARLISLE, a/k/a ASHLEY
CATHERS,

Respondent-Appellant.

UNPUBLISHED

May 19, 2009

No. 289097

Tuscola Circuit Court

Family Division

LC No. 07-009402-NA

Before: Bandstra, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor children pursuant to 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood child will be harmed if returned to the parent's house). Because the trial court had subject-matter jurisdiction over this matter, respondent has not shown a plain error affecting her substantial rights regarding the children's lawyer-guardian ad litem's adherence to statutory duties, and, respondent was afforded sufficient services to address the problem issues and has not shown error in the court's decision to terminate her parental rights, we affirm.

Respondent first argues that the trial court lacked jurisdiction over the children. To the extent that respondent challenges the trial court's subject-matter jurisdiction, we review this issue de novo. *Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004). A court's subject-matter jurisdiction may be challenged at any time, even collaterally. *In re Hatcher*, 443 Mich 426, 438; 505 NW2d 834 (1993). Subject-matter jurisdiction is established initially by the pleadings (i.e., the petitions in this case), and exists "when the proceeding is of a class the court is authorized to adjudicate and the claim stated in the complaint is not clearly frivolous." *Id.* at 444.

In this case, the petitions alleged that respondent's children were within the court's jurisdiction under MCL 712A.2(b)(1)¹ or (2).² The petitions alleged that respondent's home was filled with garbage and animal feces, and that dog feces was observed on the children's clothing, a child's car seat, the children's toys, a blanket, and throughout the bedroom. They further alleged that the kitchen was filthy and filled with dirty dishes and that food and animal feces littered the floor. In addition, the bathroom floors and counters were covered with clothes, old food, and piles of feces, and scissors and knives were on the counters. These allegations, if proven, were sufficient to establish that respondent's home was an unfit place to live, thus bringing the case within the class of cases the court is authorized to adjudicate under MCL 712A.2(b). Thus, the trial court had subject-matter jurisdiction over the case.

To the extent that respondent is attempting to challenge the trial court's exercise of jurisdiction, this issue is not properly before this Court because respondent failed to take a direct appeal from the jurisdictional decisions, and she cannot now collaterally attack the trial court's exercise of jurisdiction in this appeal from the order terminating her parental rights. *In re Hatcher*, *supra* at 438-439; *In re Gazella*, 264 Mich App 668, 680; 692 NW2d 708 (2005).

Respondent next argues that reversal is required because the children's lawyer-guardian ad litem failed to comply with various statutory and court rule requirements, and because the trial court failed to comply with MCR 3.915(B)(2)(a), which requires the court to inquire whether the lawyer-guardian ad litem has met with or contacted the children. Because respondent failed to raise this issue below, it is not preserved. Therefore, appellate relief is not warranted unless respondent can establish a plain error affecting her substantial rights. *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007). A lawyer-guardian ad litem's duty is to the child. MCL 712A.17d(1). Here, respondent fails to explain how any alleged violation of the lawyer-guardian ad litem's duties to the child affected her own substantial rights. Because the lawyer-guardian ad litem did not owe a duty to respondent, and respondent has not shown that she was prejudiced by the lawyer-guardian ad litem's alleged failure to comply with various duties owed to the child, respondent is not entitled to appellate relief.

Finally, respondent argues that the court improperly terminated her parental rights because petitioner did not provide her with appropriate services to assist her in correcting the conditions that led to the children's removal. Petitioner was required to make reasonable efforts

¹ MCL 712A.2(b)(1) confers court jurisdiction over a juvenile:

[w]hose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship.

² MCL 712A.2(b)(2) confers court jurisdiction over a juvenile:

[w]hose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

to rectify the conditions that led to the children's removal, to reunify the family, and to avoid termination of parental rights. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008); *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). The principal issue in this case was environmental neglect. The record indicates that respondent was provided with counseling to specifically address this issue, but failed to benefit from the counseling because she denied having a problem and was unwilling to address the issue in therapy. Respondent was also offered guidance and direction by other workers, including during home visits, on the importance of maintaining a clean home and avoiding clutter. In addition, anger management was added as a therapeutic goal after an incident with respondent's youngest child, but respondent failed to follow through with therapy and her case was closed for nonattendance. In sum, the record indicates that petitioner made sufficient efforts toward reunification and provided appropriate services to assist respondent in correcting the conditions that led to the children's removal. Respondent has not shown that the trial court clearly erred in terminating her parental rights. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000).

Affirmed.

/s/ Richard A. Bandstra
/s/ Donald S. Owens
/s/ Pat M. Donofrio